

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO: 16 of 1993

BETWEEN:

CELESTINE GURLEY

Appellant

and

THE QUEEN

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice  
The Honourable Mr. Justice C.M. Dennis Byron - Justice of Appeal  
The Honourable Dr. N.J.O. Liverpool - Justice of Appeal

Appearances: Mr. Arthur F. Williams for the Appellant  
Mr. Donald G. Browne Senior Crown Counsel for the Respondent

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1993: December 10

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BYRON, J.A.

The Appellant was convicted of sexual intercourse with a girl under the age of fifteen years, contrary to section 125 (1) of the Criminal Code Act No. 23 of 1988 and sentenced to the maximum sentence prescribed of five years. This offence is contrasted with rape because lack of consent is presumed on proof of the age of the girl. On the 8th December 1993 we dismissed the appeal against conviction and reduced the sentence to two years to run from the date of conviction and now give our reasons, as promised.

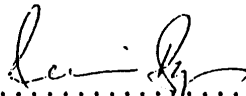
1. The manner in which the offence was committed, the antecedents of the Appellant, and the probable consequences to the victim were not aggravated and it seemed necessary to distinguish between this offence and offences under this section where there were circumstances of aggravation.
2. The offence was committed without the use of any force or perversions. At the time of the incident the girl was about 13 years 10 months and had been sexually active before. Her

evidence was that the Appellant sought and obtained her mother's permission to take her to Victoria Park that night, that they went to his home and had normal sexual intercourse on his bed after she took off her clothes at his request. Later in the night when she was out with the Appellant, he had an altercation with her father, after objecting rudely to the length of time she was spending speaking to her father. The father succeeded in asserting his paternal authority, took her to his home in Georgetown, where she does not normally live, and subsequently made a report to the police.

3. The Appellant's age was given as 29 or 32 years. He had reached this age without having any previous convictions. His counsel told the court that he was gainfully employed in the hotel industry and as a mason, that he is father of two young children and his girlfriend is expecting another. There was some evidence that he was a family friend, as he lived next door to the girl and had a relationship with her 20 year old sister which may impute a position of trust.
4. In all the circumstances of this case we are of the view that there should be a custodial sentence substantially less than the maximum punishment. The duration of custodial sentences is always a difficult challenge to the court's discretion. In many cases of this nature the imposition of a custodial sentence for a short duration will suit the justice of the case. We feel that the public interest in stamping out sexual abuse of young girls must not inhibit the exercise of judicial discretion when dealing with first offenders, especially where the offence is not aggravated in the manner of its commission.

Without repetition, we would adopt and apply the reasoning in *Roy Wilkinson v. Regina St. Vincent* Criminal Appeal No. 5 of

1991 where this court reduced the sentence of a young first offender on a conviction for having intercourse with a girl under the age of thirteen years, from fourteen to three years.



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C.M. Dennis Byron  
Justice of Appeal



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Sir Vincent Floissac  
Chief Justice



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Nicholas J.O. Liverpool  
Justice of Appeal